SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
DEC 8 1975
MICHAEL RODAK, JR., CLERK

NO. 75-663

In the Supreme Court of the United States

OCTOBER TERM 1975

NMS INDUSTRIES, INC.,
Petitioner

versus

HAROLD B. SCHWARTZ and ERIC ROSENBAUM
Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

	Page No.
Table of Authorities	i
Statement of the Case	1
Reasons for Not Granting the Writ	1
Conclusion	2
Proof of Service	3

TABLE OF AUTHORITIES

	Page No.
B & H Warehouse, Inc. v. Atlas Van Lines, Inc., 5 Cir. 490 F 2nd 818, (1974).....	2
City National Bank in Wichita v. Kiel, 348 S. W. 2nd 614 (Tex. Civ. App. 1961 writ ref.n.r.e).....	2
Gray Co. v. Jacobs, 363 S. W. 2nd 167 (Tex. Civ. App.1962 , err. ref. n.r.e.).....	2
Gresham v. Island City Savings Bank, (2 Tex. Cir. App. 52), 21 A. W. 556 1893, no writ history).....	2
Stowers v. Harper, 376 S. W. 2nd 34 (Tex. Civ. App. 1964, err. ref. n.r.e.).....	2

STATUTES AND RULES

U.S. Sup. Ct. Rule 19(1) (b), 28 U.S.C.A.....	1

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 75 - 683

NMS INDUSTRIES, INC.,

Petitioner

versus

HAROLD B. SCHWARTZ and ERIC ROSENBAUM

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondents pray that the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled cause on August 18, 1975 be denied.

STATEMENT

Petitioner's statement of the case is but an unsuccinct and argumentative reurging of its arguments presented to the Courts below. It fails to show any conflict with opinions of this most Honorable Court, or a conflict within the Courts of Appeals, or with the laws of the State of Texas, a concise factual relation of the circumstances making up this lawsuit is to be found on the opinion of Judge Mahon, Trial Judge, at Appendix B to Petitioner's Application for a Writ of Certiorari, PP B-1-B-6, "Findings of Fact", and also restated at Appendix A of same Application, Opinion of the United States Court of Appeals for the Fifth Circuit, PP A-5-A-9.

REASONS FOR NOT GRANTING THE WRIT

a. There is no conflict with the decisions of this Court.

b. There is no conflict with the decision of another court of appeals.

c. There is no constitutional questions.

d. The opinions of the Courts below are in conformity with accepted principals of law and are correct.

U. S. Sup. Ct. Rule 19(1) (b), 28 U.S.C.A., provides that a Writ of Certiorari is not a matter of right; rather, special and important reasons are necessary; Petitioner has seven questions none of which should induce this Court to grant Petitioner's Application. The failure to register stock pursuant to an agreement is a conversion under the law of Texas.

B & H Warehouse, Inc. v. Atlas Van Lines, Inc. 490 F. 2d 818 (5th Circuit. 1974); *City National Bank in Wichita v. Kiel,* 348 S. W. 2d 614 (Tex. Civ. App. 1961, writ ref. n.r.e.); *Gresham v. Island City Savings Bank,* 2 Tex. Cir. App. 52, 21 S. W. 556 (1893) no writ hist. "Bad faith" is no issue in this case, and the Courts below implemented the agreements of the parties according to their plain language. It was stipulated that all conditions precedent been met (TR. 5, TR.33). *Stowers v. Harper,* 376 S.W. 2d 34 (Tex. Civ. App. 1964, err. ref. n.r.e.); *Gray Co. v. Jacobs,* 363 S.W. 2d 167 (Tex. Civ. App. 1962, err. ref. n.r.e.). The matter of damage is to be determined by the Trial Court according to the mandate of the 5th Circuit.

CONCLUSION

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully Submitted,

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PROOF OF SERVICE

I, Stanley M. Kaufman, for the Respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 5th day of December,1975, I served copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari by mailing copies thereof in duly addressed envelopes with postage prepaid, to its attorney of record as follows:

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